



Education Committee. At the Board's February 18 meeting, the Education Committee reported that minor changes in school curricula would be appropriate. Committee members suggested that class descriptions be clarified and that the requirement for a certain number of machine hours be eliminated. The Education Committee was formed to draft guidelines to be considered by the Board in determining whether a school should be granted or retain Board certification. The Committee was scheduled to present its guidelines at the May meeting for Board approval. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 64 for background information.)

School Visitations. The Board continues to conduct site visits to observe programs leading to the certification of shorthand reporters. After visits to Condi Junior College in Campbell, Career-Com College of Business in Bakersfield, and Vista del Mar School of Court Reporting in Fresno, the Visiting Committee requested more information on each program's curriculum and staff. BCSR Executive Officer Richard Black visited the Academy of Stenographic Arts in San Francisco to observe the school's transition of ownership.

Videotape Project. At the February 18 meeting, shorthand reporter Joseph Weitzen reported on the videotape project. The Board had considered replacing the readers of the dictation section of the examination with standard videotapes to help regulate the speed of dictation, and ensure that all examinees work under similar conditions. However, Mr. Weitzen reported that the results of the test videotapes given to examinees as practice before the examination had no significant advantage over the traditional reader. Production of the videotapes would be costly, and a new videotape would have to be produced for each examination. Since the Board has not received many complaints about the readers, the videotape project has been set aside for further thought.

LEGISLATION:

AB 459 (Frizzelle) would allow any licensee of any board governed under the Business and Professions Code to have their license renewed after expiration without reexamination, so long as continuing education requirements have been fulfilled and the appropriate fees have been paid. This bill is pending in the Assembly Committee on Government Efficiency and Consumer Protection.

SB 1186 (Stirling) would provide, notwithstanding any other provisions of

law, that an appellate court shall grant an extension of time for the preparation of a reporter's transcript in civil appeals to that court. This bill is pending in the Senate Judiciary Committee.

SB 1411 (Mello) would add Santa Cruz County to a demonstration project in designated counties to assess the costs, benefits, and acceptability of using audio and video recording instead of the record prepared by a court reporter, except in criminal or juvenile proceedings. This bill is pending in the Senate Judiciary Committee.

FUTURE MEETINGS:

June 24 in San Diego.

August 26 in San Francisco.

November 10-11 in Los Angeles.

December 16 in Berkeley.

STRUCTURAL PEST CONTROL BOARD

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The Structural Pest Control Board (SPCB) is a seven-member board functioning within the Department of Consumer Affairs. The SPCB is comprised of four public and three industry representatives.

The SPCB licenses structural pest control operators and their field representatives. Field representatives are allowed to work only for licensed operators and are limited to soliciting business for that operator. Each structural pest control firm is required to have at least one licensed operator, regardless of the number of branches the firm operates. A licensed field representative may also hold an operator's license.

Licenses are classified as: (1) Branch 1, Fumigation, the control of household and wood-destroying pests by fumigants (tenting); (2) Branch 2, General Pest, the control of general pests without fumigants; or (3) Branch 3, Termite, the control of wood-destroying organisms with insecticides, but not with the use of fumigants, and including authority to perform structural repairs and corrections. An operator may be licensed in all three branches, but will usually specialize in one branch and subcontract out to other firms.

SPCB also issues applicator certificates. These otherwise unlicensed individuals, employed by licensees, are required to take a written exam on pesticide equipment, formulation, application and label directions if they apply pesti-

cides. Such certificates are not transferable from one company to another.

At the Board's February 25 meeting, Theodora Poloyinis-Engen began a new term as a member of the Structural Pest Control Board. She is an attorney and a partner in the Pasadena law firm of Engen and Kirkpatrick. She was appointed by the Senate Rules Committee.

MAJOR PROJECTS:

Proposed Regulatory Changes. On February 25, the SPCB held a public hearing in Universal City regarding numerous proposed changes to Chapter 19, Title 16 of the California Code of Regulations (CCR). (See CRLR Vol. 9, No. 1 (Winter 1989) pp. 64-65 for detailed background information.) Most of the discussion during the hearing centered on the proposed amendment of section 1991(a)(8), which would replace the scientific names for pests with their common names. Additionally, the amendment would incorporate by reference section 2-2516(c)(1), (2), (4), (6), and (13), Title 24 of the CCR, so as to be able to enforce against Board licensees the code's general construction requirements.

Other proposed changes addressed during the hearing included a requirement that qualifying managers or designated license operators who certify the training, experience, and employment of an applicant must be licensed in the branch(es) for which they are certifying experience; the establishment of minimum quality criteria for Board-approved courses and course instructors; and required evaluation of continuing education courses. All proposed changes were adopted by the Board as noticed.

The SPCB has also expressed its intent to amend section 1970.4, Title 16 of the CCR, to require that the pesticide notification language of section 8538 of the Business and Professions Code become a permanent part of the Occupant Pesticide Notice. Under section 8538, the structural pest control operator is required to provide the owner and tenant of the premises with "clear written notice" of the fumigation procedure. The notice is required to include an explanation of the pest to be controlled; the proposed pesticide to be used, including active ingredients; and a caution that toxic chemicals are being applied. The notice must also include an extensive warning about health risks and instructions in case of illness.

The Board was also presented with a draft "Specific Notice" pertaining to the same subject. The notice would require a licensee to be present whenever "aera-



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tion" is "commenced." The Board expressed its initial approval of these two proposals and instructed staff to prepare language for a formal notice and public hearing on the proposed changes.

Liquid Nitrogen as a Fumigant. At its February 25 meeting, the SPCB expressed its initial approval of a plan to allow the use of liquid nitrogen as a fumigant. To do so, the Board must adopt an amendment to its regulation which lists approved fumigants. Nitrogen is odorless and colorless but may cause suffocation by diluting the concentration of oxygen in air below levels necessary to support life.

The SPCB was initially approached by Blizzard Systems, Inc., regarding the use of liquid nitrogen. Subsequently, the Board received numerous reports and recommendations by state and federal agencies. At the meeting, the Board heard final comment on the matter and directed its staff to begin formulating a draft amendment, which was scheduled for consideration at a May 19 public hearing.

While the Board has proposed to add liquid nitrogen to the list of approved fumigants, it has not specified any related safety procedures. Several reports provided to the SPCB criticize the Blizzard proposal for the absence of required warnings of potential dangers. A U.S. Environmental Protection Agency report presented to the Board outlines the serious risks to human life posed by liquid nitrogen. Because it is an asphyxiate, it must be used under the most extreme caution. While the report did not rule out the use of liquefied nitrogen as a fumigant, it criticized the Blizzard labeling proposal as insufficient.

A memorandum by the Department of Health Services found the Blizzard data package to be lacking in "general health and safety considerations [of] workers...." It concluded that liquid nitrogen should not be classified as a fumigant "without improvement in both consumer and worker, health and safety considerations...."

LEGISLATION:

AB 459 (Frizzelle) would allow any licensee of any board governed by the Business and Professions Code to have their license renewed after expiration without reexamination, so long as continuing education requirements have been met and applicable fees have been paid. The Board believes that such an automatic renewal system is too lenient and has voted to oppose it. AB 459 is pending in the Assembly Committee on Gov-

ernmental Efficiency and Consumer Protection.

AB 908 (Killea) and **AB 2342 (Kelley)** would require passage of a written examination every three years as a condition of license renewal for structural pest control operators. The bills would also authorize an individual, for thirty days from the date of hire, to apply pesticides under the direct supervision of a licensee employed by a company. Both AB 908 and AB 2342 are pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

AB 1682 (Sher) would authorize licensed contractors to apply wood preservative after removing and replacing portions of structures damaged by pests if the work is incidental to other work being performed or is identified in a structural pest control report. This bill is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

AB 1443 (Hauser) would require the disclosure of any commission or compensation received by an individual who inspects property before a structural pest control operator begins work, when the inspection is required as a condition of making a loan on the property or as a condition of issuing a permit by a local agency. This bill is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

LITIGATION:

In *Canterbury Termite Control, Inc., v. Structural Pest Control Board*, No. B028877 (Jan. 24, 1989), the Second District Court of Appeal ruled that unlicensed personnel of a licensed pest control company may not directly or indirectly negotiate or secure contracts for the control of household pests.

Canterbury Termite Control, Inc., is a licensed provider of household pest control services. In 1984, unlicensed personnel employed by Canterbury spoke by telephone with potential customers who had identified household pests on their property. The telephone personnel arranged for Canterbury to provide pest control services. No inspection was made of the customers' premises prior to either the negotiation of the agreement to provide services or the actual performance of the pest control work.

The SPCB filed an accusation on April 16, 1985, alleging that Canterbury violated structural pest control laws at various times in 1984. Specifically, the SPCB alleged that Canterbury allowed unlicensed personnel to quote prices for the control of Branch 2 pests which

were subsequently serviced by licensed applicators without a prior inspection. Thus, the Board found the lack of an inspection and the unlicensed negotiation to be independently illegal.

On May 15, 1986, an administrative law judge (ALJ) filed a proposed decision that would have exonerated Canterbury of any wrongdoing. Pursuant to its discretion under Government Code section 11517, the SPCB declined to follow the ALJ's decision. Instead, the SPCB found Canterbury's practices in violation of structural pest control laws and imposed discipline upon Canterbury, including a license revocation which was stayed for three years subject to various conditions.

On April 14, 1987, Canterbury filed a petition for a writ of mandate in the superior court seeking to overturn the Board's decision. The petition was denied in June 1987 and Canterbury appealed to the Second District.

The court of appeal affirmed in part and reversed in part. While the court found no general exemption in the structural pest control laws for all employees of a licensed operator, the legislature has previously allowed such exemptions. The court noted that in other situations, the legislature has authorized unlicensed employees of a licensed operator to perform acts under certain conditions. However, the court held that section 8506.1 of the Business and Professions Code is not such a statute. The statute does not, either expressly or impliedly, permit unlicensed persons to contract for pest control work. Accordingly, such conduct by Canterbury employees violated structural pest control laws.

The court did not find for the Board on the inspection issue. It was unable to find any requirement that premises must first be inspected before the performance of a Branch 2 pest control operation by a licensed applicator. Thus, it held that the Board's contrary finding on this issue was unsupported by law. The court reversed on this issue and remanded it to the trial court. The judgment was affirmed "to the extent it upholds the finding that Canterbury Termite Control, Inc., violated or aided and abetted the violation of structural pest control laws by allowing unlicensed personnel to make arrangements for the performance of household pest control work."

FUTURE MEETINGS:

August 4 in San Diego.